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HOUSE BILL 210

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

RITA G. GETTY

AN ACT

RELATING TO CRIMINAL OFFENSES; AMENDING THE CONTROLLED
SUBSTANCES ACT TO PROVIDE FOR DRUG-FREE RESIDENTIAL ZONES;
ENHANCING CRIMINAL PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-31-2 NMSA 1978 (being Laws 1972,
Chapter 84, Section 2, as amended) is amended to read:

"30-31-2. DEFINITIONS. --As used in the Controlled
Substances Act:

A. "administer" means the direct application of a
controlled substance by any means to the body of a patient or
research subject by a practitioner or his agent;

B. "agent" includes an authorized person who acts on
behalf of a manufacturer, distributor or dispenser. It does not
include a common or contract carrier, public warehouseman or

1 employee of the carrier or warehouseman;

2 C. "board" means the board of pharmacy;

3 D. "bureau" means the bureau of narcotics and
4 dangerous drugs, United States department of justice, or its
5 successor agency;

6 E. "controlled substance" means a drug or substance
7 listed in Schedules I through V of the Controlled Substances Act
8 or regulations adopted thereto;

9 F. "counterfeit substance" means a controlled
10 substance that bears the unauthorized trademark, trade name,
11 imprint, number, device or other identifying mark or likeness of
12 a manufacturer, distributor or dispenser other than the person
13 who in fact manufactured, distributed or dispensed the
14 controlled substance;

15 G. "deliver" means the actual, constructive or
16 attempted transfer from one person to another of a controlled
17 substance or controlled substance analog, whether or not there
18 is an agency relationship;

19 H. "dispense" means to deliver a controlled
20 substance to an ultimate user or research subject pursuant to
21 the lawful order of a practitioner, including the administering,
22 prescribing, packaging, labeling or compounding necessary to
23 prepare the controlled substance for that delivery;

24 I. "dispenser" means a practitioner who dispenses
25 and includes hospitals, pharmacies and clinics where controlled

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1 substances are dispensed;

2 J. "distribute" means to deliver other than by
3 administering or dispensing a controlled substance or controlled
4 substance analog;

5 K. "drug" or "substance" means substances recognized
6 as drugs in the official United States pharmacopoeia, official
7 homeopathic pharmacopoeia of the United States or official
8 national formulary or any respective supplement to [~~these~~] those
9 publications. It does not include devices or their components,
10 parts or accessories;

11 L. "hashish" means the resin extracted from any part
12 of marijuana, whether growing or not, and every compound,
13 manufacture, salt, derivative, mixture or preparation of such
14 resins;

15 M "manufacture" means the production, preparation,
16 compounding, conversion or processing of a controlled substance
17 or controlled substance analog by extraction from substances of
18 natural origin or independently by means of chemical synthesis
19 or by a combination of extraction and chemical synthesis and
20 includes any packaging or repackaging of the substance or
21 labeling or relabeling of its container, except that this term
22 does not include the preparation or compounding of a controlled
23 substance:

24 (1) by a practitioner as an incident to his
25 administering or dispensing of a controlled substance in the

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1 course of his professional practice; or

2 (2) by a practitioner, or by his agent under
3 his supervision, for the purpose of or as an incident to
4 research, teaching or chemical analysis and not for sale;

5 N. "marijuana" means all parts of the plant
6 Cannabis, including any and all varieties, species and
7 subspecies of the genus Cannabis, whether growing or not, the
8 seeds thereof and every compound, manufacture, salt, derivative,
9 mixture or preparation of the plant or its seeds. It does not
10 include the mature stalks of the plant, hashish,
11 tetrahydrocannabinols extracted or isolated from marijuana,
12 fiber produced from the stalks, oil or cake made from the seeds
13 of the plant, any other compound, manufacture, salt, derivative,
14 mixture or preparation of the mature stalks, fiber, oil or cake,
15 or the sterilized seed of the plant that is incapable of
16 germination;

17 O. "narcotic drug" means any of the following,
18 whether produced directly or indirectly by extraction from
19 substances of vegetable origin or independently by means of
20 chemical synthesis or by a combination of extraction and
21 chemical synthesis:

22 (1) opium and opiate and any salt, compound,
23 derivative or preparation of opium or opiate;

24 (2) any salt, compound, isomer, derivative or
25 preparation that is a chemical equivalent of any of the

1 substances referred to in Paragraph (1) of this subsection,
2 except the isoquinoline alkaloids of opium;

3 (3) opium poppy and poppy straw, including all
4 parts of the plant of the species *Papaver somniferum* L. except
5 its seeds; or

6 (4) coca leaves and any salt, compound,
7 derivative or preparation of coca leaves, any salt, compound,
8 isomer, derivative or preparation that is a chemical equivalent
9 of any of these substances except decocainized coca leaves or
10 extractions of coca leaves that do not contain cocaine or
11 [~~ecgonine~~] ecgonine;

12 P. "opiate" means any substance having an addiction-
13 forming or addiction-sustaining liability similar to morphine or
14 being capable of conversion into a drug having addiction-forming
15 or addiction-sustaining liability. Opiate does not include,
16 unless specifically designated as controlled under Section
17 30-31-5 NMSA 1978, the dextrorotatory isomer of 3-methoxy-n-
18 methylmorphinan and its salts (dextromethorphan). "Opiate" does
19 include its racemic and levorotatory forms;

20 Q. "person" includes a partnership, corporation,
21 association, institution, political subdivision, government
22 agency or other legal entity;

23 R. "practitioner" means a physician, dentist,
24 veterinarian or other person licensed to prescribe and
25 administer drugs that are subject to the Controlled Substances

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1 Act;

2 S. "prescription" means an order given individually
3 for the person for whom is prescribed a controlled substance,
4 either directly from the prescriber to the pharmacist or
5 indirectly by means of a written order signed by the prescriber,
6 [and] in accordance with the Controlled Substances Act or
7 regulations adopted thereto;

8 T. "scientific investigator" means a person
9 registered to conduct research with controlled substances in the
10 course of his professional practice or research and includes
11 analytical laboratories;

12 U. "ultimate user" means a person who lawfully
13 possesses a controlled substance for his own use or for the use
14 of a member of his household or for administering to an animal
15 under the care, custody and control of the person or by a member
16 of his household;

17 V. "drug paraphernalia" means all equipment,
18 products and materials of any kind that are used, intended for
19 use or designed for use in planting, propagating, cultivating,
20 growing, harvesting, manufacturing, compounding, converting,
21 producing, processing, preparing, testing, analyzing, packaging,
22 repackaging, storing, containing, concealing, injecting,
23 ingesting, inhaling or otherwise introducing into the human body
24 a controlled substance or controlled substance analog in
25 violation of the Controlled Substances Act. It includes [~~but is~~

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1 ~~not limited to~~]:

2 (1) kits used, intended for use or designed for
3 use in planting, propagating, cultivating, growing or harvesting
4 any species of plant that is a controlled substance or
5 controlled substance analog or from which a controlled substance
6 can be derived;

7 (2) kits used, intended for use or designed for
8 use in manufacturing, compounding, converting, producing,
9 processing or preparing controlled substances or controlled
10 substance analogs;

11 (3) isomerization devices used, intended for
12 use or designed for use in increasing the potency of any species
13 of plant that is a controlled substance;

14 (4) testing equipment used, intended for use or
15 designed for use in identifying or in analyzing the strength,
16 effectiveness or purity of controlled substances or controlled
17 substance analogs;

18 (5) scales or balances used, intended for use
19 or designed for use in weighing or measuring controlled
20 substances or controlled substance analogs;

21 (6) diluents and adulterants, such as quinine
22 hydrochloride, mannitol, mannite dextrose and lactose, used,
23 intended for use or designed for use in cutting controlled
24 substances or controlled substance analogs;

25 (7) separation gins and sifters used, intended

1 for use or designed for use in removing twigs and seeds from or
2 in otherwise cleaning and refining marijuana;

3 (8) blenders, bowls, containers, spoons and
4 mixing devices used, intended for use or designed for use in
5 compounding controlled substances or controlled substance
6 analogs;

7 (9) capsules, balloons, envelopes and other
8 containers used, intended for use or designed for use in
9 packaging small quantities of controlled substances or
10 controlled substance analogs;

11 (10) containers and other objects used,
12 intended for use or designed for use in storing or concealing
13 controlled substances or controlled substance analogs;

14 (11) hypodermic syringes, needles and other
15 objects used, intended for use or designed for use in
16 parenterally injecting controlled substances or controlled
17 substance analogs into the human body;

18 (12) objects used, intended for use or designed
19 for use in ingesting, inhaling or otherwise introducing
20 marijuana, cocaine, hashish or hashish oil into the human body,
21 such as:

22 (a) metal, wooden, acrylic, glass, stone,
23 plastic or ceramic pipes, with or without screens, permanent
24 screens, hashish heads or punctured metal bowls;

25 (b) water pipes;

- 1 (c) carburetion tubes and devices;
- 2 (d) smoking and carburetion masks;
- 3 (e) roach clips, meaning objects used to
- 4 hold burning material, such as a marijuana cigarette, that has
- 5 become too small to hold in the hand;
- 6 (f) miniature cocaine spoons and cocaine
- 7 vials;
- 8 (g) chamber pipes;
- 9 (h) carburetor pipes;
- 10 (i) electric pipes;
- 11 (j) air-driven pipes;
- 12 (k) chilams;
- 13 (l) bongs; or
- 14 (m) ice pipes or chillers; and
- 15 (13) in determining whether an object is drug
- 16 paraphernalia, a court or other authority should consider, in
- 17 addition to all other logically relevant factors, the following:
- 18 (a) statements by the owner or by anyone
- 19 in control of the object concerning its use;
- 20 (b) the proximity of the object, in time
- 21 and space, to a direct violation of the Controlled Substances
- 22 Act or any other law relating to controlled substances or
- 23 controlled substance analogs;
- 24 (c) the proximity of the object to
- 25 controlled substances or controlled substance analogs;

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1 (d) the existence of any residue of a
2 controlled substance or controlled substance analog on the
3 object;

4 (e) instructions, written or oral,
5 provided with the object concerning its use;

6 (f) descriptive materials accompanying
7 the object that explain or depict its use;

8 (g) the manner in which the object is
9 displayed for sale; and

10 (h) expert testimony concerning its use;

11 W. "controlled substance analog" means a substance
12 other than a controlled substance that has a chemical structure
13 substantially similar to that of a controlled substance in
14 Schedule I, II, III, IV or V or that was specifically designed
15 to produce effects substantially similar to that of controlled
16 substances in Schedule I, II, III, IV or V. Examples of
17 chemical classes in which controlled substance analogs are found
18 include ~~[but are not limited to]~~ the following:

- 19 (1) phenethyl amines;
- 20 (2) N-substituted piperidines;
- 21 (3) morphinans;
- 22 (4) ~~[ecgonines]~~ ecgonines;
- 23 (5) quinazolinones;
- 24 (6) substituted indoles; and
- 25 (7) arylcycloalkyl amines.

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1 Specifically excluded from the definition of "controlled
2 substance analog" are those substances that are generally
3 recognized as safe and effective within the meaning of the
4 Federal Food, Drug and Cosmetic Act or have been manufactured,
5 distributed or possessed in conformance with the provisions of
6 an approved new drug application or an exemption for
7 investigational use within the meaning of Section 505 of the
8 Federal Food, Drug and Cosmetic Act;

9 X. "human consumption" includes application,
10 injection, inhalation, ingestion or any other manner of
11 introduction whatsoever; [~~and~~]

12 Y. "drug-free school zone" means any public or
13 private school or property [~~that is~~] used for [~~public~~] school
14 purposes and the area within one thousand feet of the school
15 property line [~~but it does not mean any post-secondary school~~];
16 and

17 Z. "drug-free residential zone" means any property
18 residentially zoned or used as a residence and the area within
19 one thousand feet of the property line of the property."

20 Section 2. Section 30-31-20 NMSA 1978 (being Laws 1972,
21 Chapter 84, Section 20, as amended) is amended to read:

22 "30-31-20. TRAFFICKING CONTROLLED SUBSTANCES-- VIOLATION. --

23 A. As used in the Controlled Substances Act,
24 "traffic" means the:

25 (1) manufacture of any controlled substance

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1 enumerated in Schedules I through V or any controlled substance
2 analog as defined in Subsection W of Section 30-31-2 NMSA 1978;

3 (2) distribution, sale, barter or giving away
4 of any controlled substance enumerated in Schedule I or II that
5 is a narcotic drug or a controlled substance analog of a
6 controlled substance enumerated in Schedule I or II that is a
7 narcotic drug; or

8 (3) possession with intent to distribute any
9 controlled substance enumerated in Schedule I or II that is a
10 narcotic drug or controlled substance analog of a controlled
11 substance enumerated in Schedule I or II that is a narcotic
12 drug.

13 B. Except as authorized by the Controlled Substances
14 Act, it is unlawful for any person to intentionally traffic.

15 Any person who violates this subsection is:

16 (1) for the first offense, guilty of a second
17 degree felony and shall be sentenced pursuant to the provisions
18 of Section 31-18-15 NMSA 1978; and

19 (2) for the second and subsequent offenses,
20 guilty of a first degree felony and shall be sentenced pursuant
21 to the provisions of Section 31-18-15 NMSA 1978.

22 C. Any person who knowingly violates Paragraph (1)
23 of Subsection B of this section within a drug-free school zone
24 ~~[excluding private property residentially zoned or used~~
25 ~~primarily as a residence]~~ or a drug-free residential zone is

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1 guilty of a first degree felony and shall be sentenced pursuant
2 to the provisions of Section 31-18-15 NMSA 1978. "

3 Section 3. Section 30-31-22 NMSA 1978 (being Laws 1972,
4 Chapter 84, Section 22, as amended) is amended to read:

5 "30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--
6 DISTRIBUTION PROHIBITED. --

7 A. Except as authorized by the Controlled Substances
8 Act, it is unlawful for any person to intentionally distribute
9 or possess with intent to distribute a controlled substance or a
10 controlled substance analog except a substance enumerated in
11 Schedule I or II that is a narcotic drug or a controlled
12 substance analog of a controlled substance enumerated in
13 Schedule I or II that is a narcotic drug. Any person who
14 violates this subsection with respect to:

15 (1) marijuana is:

16 (a) except as provided in Subparagraph
17 (c) of this paragraph, for the first offense, guilty of a fourth
18 degree felony and shall be sentenced pursuant to the provisions
19 of Section 31-18-15 NMSA 1978;

20 (b) for the second and subsequent
21 offenses, guilty of a third degree felony and shall be sentenced
22 pursuant to the provisions of Section 31-18-15 NMSA 1978;

23 (c) for the first offense, if more than
24 one hundred pounds is possessed with intent to distribute or
25 distributed or both, guilty of a third degree felony and shall

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1 be sentenced pursuant to the provisions of Section 31-18-15 NMSA
2 1978; and

3 (d) for the second and subsequent
4 offenses, if more than one hundred pounds is possessed with
5 intent to distribute or distributed or both, guilty of a second
6 degree felony and shall be sentenced pursuant to the provisions
7 of Section 31-18-15 NMSA 1978;

8 (2) any other controlled substance enumerated in
9 Schedule I, II, III or IV or a controlled substance analog of a
10 controlled substance enumerated in Schedule I, II, III or IV
11 except a substance enumerated in Schedule I or II that is a
12 narcotic drug or a controlled substance analog of a controlled
13 substance enumerated in Schedule I or II that is a narcotic
14 drug, is:

15 (a) for the first offense, guilty of a third
16 degree felony and shall be sentenced pursuant to the provisions
17 of Section 31-18-15 NMSA 1978; and

18 (b) for the second and subsequent offenses,
19 guilty of a second degree felony and shall be sentenced pursuant
20 to the provisions of Section 31-18-15 NMSA 1978; and

21 (3) a controlled substance enumerated in Schedule
22 V or a controlled substance analog of a controlled substance
23 enumerated in Schedule V is guilty of a misdemeanor and shall be
24 punished by a fine of not less than one hundred dollars (\$100)
25 or more than five hundred dollars (\$500) or by imprisonment for

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1 a definite term not less than one hundred eighty days but less
2 than one year, or both.

3 B. Except as authorized by the Controlled Substances
4 Act, it is unlawful for any person to intentionally create or
5 deliver, or possess with intent to deliver, a counterfeit
6 substance. Any person who violates this subsection with respect
7 to:

8 (1) a counterfeit substance enumerated in
9 Schedule I, II, III or IV is guilty of a fourth degree felony
10 and shall be sentenced pursuant to the provisions of Section
11 31-18-15 NMSA 1978; and

12 (2) a counterfeit substance enumerated in
13 Schedule V is guilty of a petty misdemeanor and shall be
14 punished by a fine of not more than one hundred dollars (\$100)
15 or by imprisonment for a definite term not to exceed six months,
16 or both.

17 C. Any person who knowingly violates Subsection A or B
18 of this section while within a drug-free school zone [~~excluding~~
19 ~~private property residentially zoned or used primarily as a~~
20 ~~residence~~] or a drug-free residential zone with respect to:

21 (1) marijuana is:

22 (a) except as provided in Subparagraph (c) of
23 this paragraph, for the first offense, guilty of a third degree
24 felony and shall be sentenced pursuant to the provisions of
25 Section 31-18-15 NMSA 1978;

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1 (b) for the second and subsequent offenses,
2 guilty of a second degree felony and shall be sentenced pursuant
3 to the provisions of Section 31-18-15 NMSA 1978;

4 (c) for the first offense, if more than one
5 hundred pounds is possessed with intent to distribute or
6 distributed or both, guilty of a second degree felony and shall
7 be sentenced pursuant to the provisions of Section 31-18-15 NMSA
8 1978; and

9 (d) for the second and subsequent offenses,
10 if more than one hundred pounds is possessed with intent to
11 distribute or distributed or both, guilty of a first degree
12 felony and shall be sentenced pursuant to the provisions of
13 Section 31-18-15 NMSA 1978;

14 (2) any other controlled substance enumerated in
15 Schedule I, II, III or IV or a controlled substance analog of a
16 controlled substance enumerated in Schedule I, II, III or IV
17 except a substance enumerated in Schedule I or II that is a
18 narcotic drug or a controlled substance analog of a controlled
19 substance [~~enumerated~~] enumerated in Schedule I or II that is a
20 narcotic drug, is:

21 (a) for the first offense, guilty of a second
22 degree felony and shall be sentenced pursuant to the provisions
23 of Section 31-18-15 NMSA 1978; and

24 (b) for the second and subsequent offenses,
25 guilty of a first degree felony and shall be sentenced pursuant

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1 to the provisions of Section 31-18-15 NMSA 1978;

2 (3) a controlled substance enumerated in Schedule
3 V or a controlled substance analog of a controlled substance
4 enumerated in Schedule V is guilty of a fourth degree felony and
5 shall be sentenced pursuant to the provisions of Section
6 31-18-15 NMSA 1978; and

7 (4) the intentional creation, delivery or
8 possession with the intent to deliver:

9 (a) a counterfeit substance enumerated in
10 Schedule I, II, III or IV is guilty of a third degree felony and
11 shall be sentenced pursuant to the provisions of Section
12 31-18-15 NMSA 1978; and

13 (b) a counterfeit substance enumerated in
14 Schedule V is guilty of a misdemeanor and shall be punished by a
15 fine of not less than one hundred dollars (\$100) nor more than
16 five hundred dollars (\$500) or by imprisonment for a definite
17 term not less than one hundred eighty days but less than one
18 year, or both.

19 D. Notwithstanding the provisions of Subsection A of
20 this section, distribution of a small amount of marijuana for no
21 remuneration shall be treated as provided in Paragraph (3) of
22 Subsection B of Section 30-31-23 NMSA 1978. "